

**Article \_\_\_\_\_ . Vested Rights Determinations**

**§ \_\_\_\_ . Purpose of Regulations.**

No person who has obtained a vested right to conduct surface mining operations prior to January 1, 1976 shall be required to secure a permit pursuant to Section 2770 of the Public Resources Code. Any person claiming a vested right to conduct surface mining operations in a jurisdiction where the State Mining and Geology Board (“the Board”) is lead agency pursuant to section 2774.4 of the Public Resources Code must establish such claim in a public proceeding under this article. In such a proceeding the claimant shall assume the burden of proof.

**§ \_\_\_\_ . Filing of Request for Determination.**

A claim of vested rights shall be initiated by filing a Request for Determination with the Board. At a minimum the Request for Determination shall include the following information:

- (1) A map indicating the exact location of the property upon which vested rights are asserted, including township and range;
- (2) A legal description of such property using metes and bounds, parcel numbers, or other descriptive methods to specifically identify such property;
- (3) Copies of all documents which together establish title to such property;
- (4) Written statements, with supporting documentation, indicating the basis for claim of a vested right to conduct mining operations upon such property;

- (5) Written statements, with supporting documentation, identifying the scope or scale of the vested right claimed;
- (6) Copies of, or statements specifically identifying, all local land use or mining ordinances or regulations which either may presently, or have historically, governed conduct of mining operations upon such property; and
- (7) The names and mailing addresses of the owners of all properties adjacent to property upon which a vested right is being asserted.

**§ \_\_\_\_\_. Determination of Jurisdiction.**

The Chairman of the Board, or the Chairman's designee, based upon the information submitted pursuant to Section \_\_\_\_\_ of this article, shall initially evaluate whether the Request for Determination is within the jurisdiction of the Board for purposes of making a vested rights determination and whether the Request for Determination contains the minimum information specified in Section \_\_\_\_\_ of this article. The Chairman of the Board, or the Chairman's designee, shall make such initial determination within 15 days of receipt of the Request for Determination. If the Chairman, or the Chairman's designee, determines that the Request for Determination is not within the Board's jurisdiction or does not contain the information required by the Board to evaluate the Request, the Request for Determination shall be rejected and the deficiencies in the Request specifically identified in correspondence to the claiming party.

**§ \_\_\_\_\_. Notice of Pending Determination.**

Within 30 days after the Chairman of the Board, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section \_\_\_\_ a notice of pending vested rights determination shall be mailed by the executive officer of the Board to every adjacent landowner identified in the Request for Determination and to the county, city, or regional agency originally holding lead agency status for the identified property and mining operation. A notice of pending vested rights determination shall also be provided to the person claiming vested rights for posting upon the property in question in an open and conspicuous place that is reasonably visible to the public. The notice of pending vested rights determination shall identify the specific property upon which such vested rights are asserted and shall identify the Board as the agency which will be making the determination. The notice shall contain the Board's mailing and electronic addresses and a request that comments be forwarded to the Board.

**§ \_\_\_\_\_. Public Hearing.**

No vested rights determination will be made by the Board without a public hearing and an opportunity for affected parties to comment.

**§ \_\_\_\_\_. Selection of Hearing Officer.**

The Board may delegate conduct of a vested rights public hearing to a committee of at least two Board member to be appointed for that hearing by the Chairman of the Board. The Board may also delegate conduct of a vested rights public hearing to an administrative hearing officer or special master.

As soon as practicable after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section \_\_\_\_, and in no event more than 45 days from such conclusion, the Board, or a designee of the Board shall decide whether a vested rights public hearing will be conducted by the Board, a subcommittee of the Board, an administrative hearing officer selected by the Board, or a special master selected by the Board.

**§ \_\_\_\_.** **Vested Rights Hearing - Schedule.**

The Board, its delegated committee, administrative hearing officer or special master shall schedule and hold a public hearing on a vested rights determination no less than 60 days after the notice of pending vested rights determination was mailed pursuant to Section \_\_\_\_\_. In no case shall the hearing be scheduled more than 180 days after the Chairman, or the Chairman's designee, concludes that the Request for Determination is within the Board's jurisdiction and contains the minimum information required by Section \_\_\_\_ unless such hearing schedule is agreed to by the party claiming vested rights.

**§ \_\_\_\_.** **Vested Rights Hearing Procedure - Notice.**

- (a) At least 10 working days prior to a vested rights public hearing, the Board shall give further public notice as follows:
  - (1) By mailing the notice to the Claimant and all parties receiving notice pursuant to Section \_\_\_\_\_;
  - (2) By mailing the notice to any person who requests notice of the hearing;
  - (3) By mailing the notice to the Board's regular mailing list; and

- (4) By posting of the notice in a place where notices are customarily posted in the city, or county, or regional jurisdiction within which the property is located or the surface mining operations are to take place (or both, if affected operations and affected property are in different jurisdictions.)
- (b) The notice of hearing shall include the following:
  - (1) The name of the party claiming vested rights;
  - (2) Identification of the surface mining operation, a brief description of the location of the operation and area of asserted vested rights by reference to any commonly known landmarks in the area, and a simple location map indicating the general location of the operation;
  - (3) A statement inviting the party claiming vested rights, the local agency, and the public to make statements at the hearing regarding the vested rights asserted, and
  - (4) The time, date, and location of the public hearing.

**§ \_\_\_\_\_. Vested Rights Hearing Procedure - Record.**

The record before the Board, its delegated committee, administrative hearing officer, or special master shall be all of the materials provided pursuant to Section \_\_\_\_, and all other written materials and public comments provided in response to the notice of pending determination or received at the public hearing.

**§ \_\_\_\_\_. Vested Rights Hearing - Sequence.**

- (a) The public hearing should normally proceed in the following manner:
  - (1) Identification of the record;

- (2) Statements on behalf of the vested rights claimant;
  - (3) Statements on behalf of the agency originally holding lead agency status;
  - (4) Statements on behalf of the public;
  - (5) Rebuttal on behalf of the claimant; and
  - (6) Motion to close the public hearing.
- (b) Notwithstanding the above, the Chairman or the Chairman's designee for purposes of conducting the hearing may in the exercise of discretion, determine the order of the proceedings.
- (c) The Chairman or the Chairman's designee may impose reasonable time limits upon statements and presentations and may accept written statements in lieu of oral statements. Written statements must be submitted at least five days prior to the hearing.
- (d) The public hearing shall be recorded either electronically or by other convenient means.

**§ \_\_\_\_\_. Vested Rights Hearing Procedure - Continuance.**

The public hearing may be continued from day to day as necessary to receive all of the statements, information, and testimony identified in Section \_\_\_\_.

**§ \_\_\_\_\_. Vested Rights Hearing Procedure - Determination.**

Following the public hearing, the Board, if the Board conducted the hearing, or its committee, administrative hearing officer, or special master shall determine whether substantial evidence in light of the whole record supports the vested right or rights claimed. The determination shall identify upon what specific property the vested rights are established and the scope of mining operations included within the established vested right or rights. If the public

hearing was conducted by a committee of the Board or an administrative hearing officer or special master designated by the Board, the findings and recommendation or proposed decision of the committee of the Board, administrative hearing officer, or special master shall be presented to a quorum of the Board at a regular business meeting, no later than 60 days after completion of the vested rights public hearing, for consideration by the full Board. The Board may adopt the recommendation or proposed decision or reject the recommendation or proposed decision and direct the matter back to its delegate for further consideration in light of the discussion before the full Board. Following adoption of the Board's final determination notification shall be made by certified mail to the party claiming vested rights and to the local agency originally holding lead agency status. Notification of the final determination of the Board shall also be made by regular mail to any person who has requested such notice and shall be immediately posted upon the Board's website.

**§ \_\_\_\_\_. Effect of Vested Rights Determination.**

A final determination by the Board recognizing a claim of vested rights shall constitute acknowledgment that the specific mining operations as identified upon the specific property or properties does not require a permit under Public Resources Code Section 2770 provided that no substantial change may be made in such mining operations. If any vested rights identified pursuant to this article lapse or are otherwise abandoned the mining operations identified shall become subject to the permit requirements of the Surface Mining and Reclamation Act.